

FIRST REGULAR SESSION

SENATE BILL NO. 245

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0942S.01I

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to the notification of data security breaches.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto one new
2 section, to be known as section 407.1145, to read as follows:

**407.1145. 1. For purposes of this section, the following terms
2 mean:**

3 (1) "Breach of the security of the data", unauthorized acquisition
4 of computerized or non-computerized data that compromises the
5 security, confidentiality, or integrity of personal information
6 maintained by the data collector. Good faith acquisition of personal
7 information by an employee or agent of the data collector for a
8 legitimate purpose of the data collector is not a breach of the security
9 of the data, provided that the personal information is not used for a
10 purpose unrelated to the data collector or subject to further
11 unauthorized disclosure. Breach of the security of non-computerized
12 data may include, but is not limited to, unauthorized photocopying,
13 facsimiles, or other paper-based transmittal of documents;

14 (2) "Consumer", an individual who is a resident of this state;

15 (3) "Data Collector", may include, but is not limited to,
16 government agencies, public and private universities, privately and
17 publicly held corporations, financial institutions, retail operators, and
18 any other entity which, for any purpose, whether by automated
19 collection or otherwise, handles, collects, disseminates, or otherwise
20 deals with personal information;

21 (4) "Personal information", a consumer's last name, address, or

22 phone number in combination with any one or more of the following
23 data elements, when either the name or the data elements are not
24 encrypted or redacted, or encrypted with an encryption key that was
25 also acquired:

26 (a) Social Security number;

27 (b) Driver's license number or state identification card number;

28 (c) Account number, credit or debit card number, if
29 circumstances exist wherein such a number could be used without
30 additional identifying information, access codes, or passwords;

31 (d) Account passwords or personal identification numbers (PINs)
32 or other access codes;

33 (e) Biometric data;

34 (f) Any items in paragraphs (a) through (e) of this subdivision
35 when not in connection with the consumer's last name, address, or
36 phone number if the information compromised would be sufficient to
37 perform or attempt to perform identity theft against the person whose
38 information was compromised.

39 "Personal information" does not include publicly available information
40 that is lawfully made available to the general public from federal, state,
41 or local government records, provided that such publicly available
42 information has not been aggregated or consolidated into an electronic
43 database or similar system by the governmental agency or by another
44 person.

45 2. (1) Except as provided in subdivision (2) of this subsection,
46 any data collector that owns or uses personal information in any form,
47 whether computerized, paper, or otherwise, that includes personal
48 information concerning a consumer shall notify the consumer that
49 there has been a breach of the security of the data following discovery
50 of the breach. The disclosure notification shall be:

51 (a) Made in the most expedient time possible and without
52 unreasonable delay;

53 (b) Consistent with the legitimate needs of law enforcement as
54 provided in subdivision (2) of this subsection; and

55 (c) Consistent with any measures necessary to determine the
56 scope of the breach and restore the reasonable integrity, security, and
57 confidentiality of the data system.

58 (2) The notification to consumers required by this section may

59 be delayed if a law enforcement agency determines in writing that the
60 notification may seriously impede a criminal investigation.

61 (3) The notification to consumers required by this section may
62 be provided by one of the following methods:

63 (a) Written notice;

64 (b) Electronic notice, if the notice provided is consistent with the
65 provisions in 15 U.S.C. 7001 regarding electronic records and signatures
66 for notices legally required to be in writing;

67 (c) Substitute notice, if the data collector demonstrates that the
68 cost of providing notice would exceed two hundred fifty thousand
69 dollars, or if the affected class of subject consumers to be notified
70 exceeds five hundred thousand, or to any affected consumer for whom
71 the data collector does not have sufficient contact information by
72 which to notify under paragraphs (a) or (b) of this
73 subdivision. Substitute notice shall consist of all of the following:

74 a. Conspicuous posting of the notice on the Internet site of the
75 data collector, if the data collector maintains a public Internet site; and

76 b. Notification to major statewide media. The notice to media
77 shall include a toll-free phone number where a consumer can learn
78 whether or not his or her personal data is included in the security
79 breach.

80 (4) The notification required under this section shall include:

81 (a) To the extent possible, a description of the categories of
82 information that were, or is reasonably believed to have been, acquired
83 by an unauthorized person, including Social Security numbers, driver's
84 license or state identification numbers and financial data; and

85 (b) A toll-free number that the consumer may use to contact the
86 data collector or the agent of the data collector from which the
87 consumer may learn:

88 a. What types of information the data collector maintained about
89 that consumer or about consumers in general; and

90 b. Whether or not the data collector maintained information
91 about that consumer; and

92 c. The toll-free contact telephone numbers and addresses for the
93 major credit reporting agencies.

94 3. A data collector required to provide notification under
95 subsection 2 of this section shall provide or arrange for the provision

96 of, to each consumer to whom notification is provided under subsection
97 2 of this section and on request and at no cost to such consumer,
98 consumer credit reports from at least one of the major credit reporting
99 agencies beginning not later than two months following a breach of
100 security and continuing on a quarterly basis for a period of two years
101 thereafter.

102 4. (1) Any consumer injured by a violation of this section may
103 institute a civil action to recover damages.

104 (2) Any data collector that violates, proposes to violate, or has
105 violated this section may be enjoined.

106 (3) The rights and remedies available under this section are
107 cumulative to each other and to any other rights and remedies
108 available under law.

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Bill

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